



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Teamsters Local 633 of New Hampshire

Complainant

v.

Town of North Hampton

Respondent

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Case No. G-0003-1

Decision No. 2004-132

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

Teamsters Local Union 633 of New Hampshire (hereinafter "the Union") filed an improper practice charge against the Town of North Hampton (hereinafter "the Town") on June 14, 2004 alleging that the Town violated RSA 273-A:5 I (a), (c) and (e) by virtue of certain conduct relating to the bargaining unit position of administrative clerk. More specifically, the Union states that during the course of negotiations for a successor contract, the Town failed to disclose its intent to change the position of administrative clerk to that of an administrative assistant. The administrative assistant position has a significant increase in wages over that which was negotiated for the administrative clerk, and the Union contends that this non-negotiated increase in wages had a direct bearing on the overall budget voted on during the March 2004 Town Meeting. The Union alleges that contract negotiations were completed in good faith by the Union, which included wage increases for police officers, the administrative clerk (now vacant), and public works personnel, but none as high as the administrative assistant position. The Union requests that the PELRB sustain the complaint and issue a cease and desist against the Town.

The Town filed its answer denying the Union's charge on June 22, 2004. The Town specifically denies that it "changed" the administrative clerk's position to an administrative assistant's position and affirmatively states that it created the new position of administrative assistant. In this regard, the Town observes that the administrative clerk position still exists within the bargaining unit. The Town acknowledges that the parties reached a tentative contract settlement in August 2003, and that it was that agreement, effective July 1, 2004, that was ratified by the 2004 Annual Town Meeting. However, regarding any actions or omissions alleged by the Union to have occurred during negotiations, the Town asserts that those actions or omissions would have occurred more than six (6) months prior to the filing of the instant charge,

and thus exceed the applicable statute of limitations for an improper practice charge. The Town relates that on or about December 24, 2003, Chief of Police Brian Page announced the creation of the new position of "Administrative Assistant to the Chief." As described by the Town, the position was posted with a complete job description and salary range, and was listed as a non-union, exempt position. The Town asserts that the creation of a new position and job description, as well as the establishment of the position's initial salary and benefits, is all within the rights reserved to management. It notes that at no time has the Union made a demand to bargain or filed a grievance over the creation of said position. Based upon all of the aforementioned facts and arguments, the Town requests that the instant complaint be dismissed.

The parties' representatives appeared before the undersigned-hearing officer at a pre-hearing conference conducted on August 23, 2004 at PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the Union: Thomas D. Noonan, Business Agent

For the Town: J. Joseph McKittrick, Esquire

ISSUES FOR REVIEW BY THE BOARD

- (1) Is the Union's complaint barred by the six (6) month statute of limitations set forth in RSA 273-A:6 and Pub. 201:02(a)?
- (2) If not, did the Town violate RSA 273-A:5 I (a) (c) and/or (e) by its actions relative to the Administrative Clerk and Administrative Assistant positions?

WITNESSES

For the Complainant:

1. Officer Joshua Stokel

For the Town:

1. Chief of Police Brian Page

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibits:

1. Collective Bargaining Agreement, 2001-2004
2. Collective Bargaining Agreement, 2004-2009

3. 12/24/03 Job Posting
4. Administrative Clerk Job Description
5. Administrative Assistant Job Description
6. 8/14/03 Tentative Agreement
7. 12/29/03 Staff Meeting Minutes
8. 1/12/04 Standard Operating Procedure - Staffing Flow Chart
9. 1/14/04 Staff Meeting Minutes

For the Union:

None other than those referenced above as joint.

For the Town:

1. 1/18/04 Union Meeting Minutes

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be one-half (1/2) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

1. At the outset of the pre-hearing conference, the PELRB Hearing Officer discussed with the parties' representatives the settlement prospects of the instant matter. Based upon preliminary discussions, the parties' representatives expressed a willingness to further consult with each other and their respective clients over the course of the next week. Accordingly, the parties' representatives are directed to report to the PELRB Hearing Officer no later than **August 30, 2004** regarding the status and result of such settlement efforts.
2. In the event that this matter remains unresolved, the parties' representatives shall meet, or otherwise confer, on or before **October 6, 2004** in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.
3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any and all exhibits, for

identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

4. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.

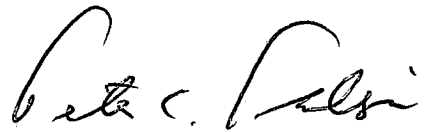
5. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on

October 26, 2004 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 24th day of August, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Thomas D. Noonan, Business Agent
J. Joseph McKittrick, Esq.